

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Received

APR 05 1999

Common Carrier Bureau
Network Service Division
Office of the Chief

In the Matter of

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Common Carrier Bureau Seeks Comment
on Massachusetts Department of
Telecommunications and Energy Request
For Additional Authority To Implement
Various Area Code Conservation
Methods in the 508, 617, 781, and 978
Area Codes

DA 99-461
NSD File No. L-99-19

CC DOCKET 96-98

RECEIVED

To: Chief, Common Carrier Bureau

APR - 7 1999

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Federal Communications Commission
Office of Secretary

I. INTRODUCTION

Pursuant to the Public Notice of the Federal Communications Commission ("Commission"),^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the Request of the Massachusetts Department of Telecommunications and Energy ("DTE") for additional authority to implement an array of number conservation measures that are outside the scope of the DTE's delegated authority.^{2/}

In the Request, the DTE seeks authority to investigate and implement nine different conservation measures, asserting that these conservation measures are intended "to minimize customer

^{1/} Public Notice, "Common Carrier Bureau Seeks Comment on Massachusetts Department of Telecommunications and Energy Request for Additional Authority to Implement Various Area Code Conservation methods in the 508, 617, 781, and 978 Area Codes," DA 99-461, released March 5, 1999.

^{2/} Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, filed February 17, 1999 (hereinafter "DTE Request").

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confusion and expense associated with introducing new area codes for the second time in two years in Massachusetts."3/ By implementing the "full array of area code conservation measures," the DTE claims, it will "help mitigate the need for additional area codes."4/

The DTE has presented no specific plan to be evaluated by the Commission. This open-ended, broad-ranging request for authority is nothing more than an additional attempt to seek reconsideration of the Commission's decision in the Pennsylvania Public Utilities Commission ("PA PUC") decision.5/ Additionally, the DTE has not demonstrated that its request fulfills the requirements for waiver of a Commission rule, i.e., that its circumstances are unique, there is no reasonable alternative solution within the Commission's rules, and waiver is in the public interest.6/ The DTE's request is based on speculation as it admittedly has not investigated whether any of the proposed measures would actually conserve numbers without having a discriminatory impact among carriers. Without being provided a specific pooling or other conservation plan, the Commission cannot appropriately address the merits of the

3/ DTE Request at p. 1.

4/ *Id.* at p. 5.

5/ Memorandum Opinion and Order and Order on Reconsideration, FCC 98-224, CC Docket No. 96-98, NSD File No. L-97-42 (released September 28, 1998) ("PA PUC Decision").

6/ See Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164 (D.C.Cir. 1990); WAIT Radio v. FCC, 418 F.2d 2153 (D.C.Cir. 1969).

DTE's Request. For these reasons, the Commission should dismiss the request.

II. BACKGROUND

In the PA PUC decision, the Commission affirmed its earlier conclusion that it has plenary authority over administration of the NANPA pursuant to the Communications Act;^{7/} it delegated only limited authority for states to select among certain code relief alternatives. The PA PUC decision granted states additional authority to order code rationing in narrowly defined circumstances: (a) there is a specific code relief plan in place, (b) the Numbering Plan Area ("NPA") would run out of numbers prior to the implementation of relief, and (c) the industry has been unable to reach a consensus on a rationing plan.^{8/} However, other conservation measures, such as number pooling -- whether thousands block pooling or individual number pooling -- were not delegated to the states because "of the activity occurring at the federal level to develop such national standards" for number pooling.^{9/} As the Commission stated therein, "[i]f each state commission were to implement its own NXX code administration measures without any uniformity or standards, it would hamper the

^{7/} See Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) at para. 285.

^{8/} PA PUC Decision at para. 24.

^{9/} *Id.* at para. 27.

[North American Numbering Plan Administrator's] efforts to carry out its duties as the centralized NXX code administrator."10/

Thus, in its most recent order, the Commission reaffirmed the demarcation of jurisdiction regarding numbering issues. At the same time, however, the Commission indicated that it would entertain state requests for additional authority to implement conservation measures outside the scope of their delegated authority.11/ The Commission stated that it is "interested in working with state commissions that have additional ideas for innovative number conservation methods that this Commission has not addressed, or state commissions that wish to initiate number pooling trials the implementation of which would fall outside of the guidelines we adopt in this Order."12/ Such requests, however, would have to demonstrate "a proposed conservation method [that] will conserve numbers and thus slow the pace of area code relief, without having anti-competitive consequences. . ."13/

III. DISCUSSION

The DTE petition does not fulfill the Commission's stated criteria for approval of additional numbering authority. Nowhere in its petition does the DTE present a specific conservation or relief plan nor does it demonstrate how its plethora of proposals will conserve numbers without having anti-competitive consequences

10/ Id. at para. 33.

11/ Id. at para. 31.

12/ Id.

13/ Id.

within the telecommunications industry. Additionally, the DTE does not distinguish its proposals from those struck down in the PA PUC decision.

Generally, to be granted a waiver of a Commission rule, the petitioner must establish that its circumstances are unique, it has no reasonable alternative solution within the Commission's rules, and waiver is in the public interest.^{14/} Nowhere in the DTE's petition does it attempt to meet this waiver standard. Certainly nothing about the exhaust of telephone numbers is unique to Massachusetts, and many states have adopted code relief consistent with their delegated authority to select among code overlays and geographic splits. Much of the work of the North American Numbering Council during the past year has addressed the increasing number of code exhausts taking place throughout the country, and considered the most effective ways to more efficiently assign numbers in the future.^{15/}

^{14/} See footnote 6 above.

^{15/} For example, in response to a direction of the Common Carrier Bureau, the NANC established a Number Resource Optimization Working Group ("NRO"), which included carriers, state regulators, consumer groups, the Commission and other interested parties. See Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau, to Alan C. Hasslewander, Chairman of NANC, dated March 23, 1998. The NRO recommended certain number optimization measures -- some of which can be done on a local basis, others requiring consistent national standards and implementation. Given this work, and the Commission's pending review of the NRO and comments thereon from interested parties, the DTE's request for broad autonomous authority over number administration is merely an improper collateral attack on the PA PUC Order -- on which the DTE already has a pending petition for reconsideration. There are no unique circumstances here that warrant the requested waiver.

The Commission's rules provide the DTE authority to implement code relief, whether a split or an overlay, and to mandate a code rationing plan to the extent the industry cannot agree on one. Thus, there are alternatives available to the DTE to assure the continued availability of telephone numbers for consumers in Massachusetts. However, the Commission previously concluded that number pooling, code allocation standards (e.g., fill rates) and unassigned number porting are number conservation methods with national implications due to their impact on this national resource.^{16/} Inconsistent number allocation methodologies and number pooling plans from state-to-state are not in the public interest, as the Commission previously concluded. Therefore, the DTE has not fulfilled the Commission's requirements for a waiver, and the request should be dismissed.

Additionally, the DTE has failed to demonstrate how its proposals meet the specific waiver requirements outlined in the PA PUC decision. Although proposing a number of vague conservation measures, the DTE fails to demonstrate how these proposals will conserve telephone numbers without having a discriminatory impact among industry participants. Moreover, unlike the Illinois Commerce Commission, which has been granted authority to conduct a

^{16/} As Nextel stated in comments filed today in NSD File No. L-99-21, the New York Public Service Commission's Request for Waiver, it would not oppose a 1,000 number block pooling trial that is (a) limited to LNP-capable carriers; (b) ensures the availability of 10,000 number blocks for non-LNP-capable carriers; and (c) has a specific code relief plan, i.e., split or overlay, in place should it be necessary to provide relief despite number pooling.

pooling trial, the DTE does not include a specific relief plan (i.e., a split or an overlay) that can be implemented immediately should the number conservation measures fail.

Finally, the DTE seeks authority to implement two conservation measures for which it already has authority. Both inconsistent rates centers and expanded calling areas are within the state's jurisdiction.^{17/} Investigating and implementing either of these methodologies does not require Commission approval and may mitigate the exhaust of telephone numbers in Massachusetts, as would rate center consolidation (another measure solely within the DTE's jurisdiction) with or without implementation of the other proposals.

IV. CONCLUSION

The DTE's petition is a second attempt to seek reconsideration of the PA PUC decision. Despite Congress' express mandate that number allocation decisions are solely within the jurisdiction of the Commission, the DTE disagrees with the Commission's limited delegation of that authority to the states, and has previously sought reconsideration of that decision. The assignment and allocation of telephone numbers is a national issue as telephone numbers are a national -- not an individual state-by-state -- resource. If Massachusetts is allowed to move forward with its broad-ranging "investigation and implementation," the North American Numbering Plan Administrator, as the Commission has already recognized, will have the "impossible task" of performing

^{17/} See PA PUC decision at para. 29.

its functions in a manner consistent with the Commission's rules, industry guidelines, and potentially 51 different regimes.

The DTE has failed to specify any particular conservation plan or ultimate area code relief plan. Additionally, it has not demonstrated how its particular circumstances are unique and its vague plan in the public interest. For these reasons, the Commission should summarily dismiss the DTE's petition.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Robert S. Foosaner', is written over a horizontal line.

Robert S. Foosaner
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Chief Regulatory Officer

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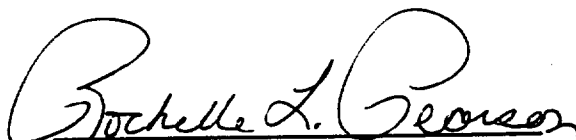
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Date: April 5, 1999

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 5th day of April 1999, caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

Al McCloud
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2000 M Street, NW
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A handwritten signature in black ink, reading "Rochelle L. Pearson". The signature is written in a cursive style with a large initial "R" and "P".

Rochelle L. Pearson